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International Convention for the Protection of All Persons from Enforced Disappearance

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Tenth session

Summary record of the 166th meeting*
Held at the Palais Wilson, Geneva, on Friday, 11 March 2016, at 3 p.m.

Chair: Mr. Decaux

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Commemoration of the tenth anniversary of the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance

* No summary records were issued for the 164th and 165th meetings.

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The meeting was called to order at 3.05 p.m.

Commemoration of the tenth anniversary of the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance

Opening

1. **Mr. Salama** (Director, Human Rights Treaties Division, Office of the United Nations High Commissioner for Human Rights) said that the adoption of the Convention 10 years earlier had been a landmark and the culmination of a 40-year struggle led by the international community and the families of disappeared persons. Their conviction and unflagging efforts, which they had pursued even while enduring the pain of searching for their loved ones, had contributed greatly to making the Convention a reality.

2. He thanked France and Argentina, which had promoted the Convention at the time of its negotiation and subsequently, as well as Morocco and Japan, which had organized the present commemoration. He also wished to pay tribute to the late Ambassador Bernard Kessedjian, whose determination and diplomatic skills had made it possible to draft the Convention in less than four years.

3. Although the Convention had arisen in response to the horrendous practices of some Latin American dictatorships in the 1970s and 1980s, it would be a mistake to consider it relevant only to past crimes or a specific region. The drafters of the Convention had been prescient, and its continued relevance was evident from current world events, as not only political dissenters but also migrants and civilian hostages in armed conflicts could be victims of enforced disappearance.

4. Only 19 of the 51 States parties to the Convention had recognized the competence of the Committee to receive and consider individual communications; and the Committee was seeing an alarming increase in the number of requests for urgent action to locate persons who had disappeared in States parties. He trusted that the present commemoration would add impetus to efforts to achieve universal ratification and implementation of the Convention.

5. **Ms. Laurin** (Ambassador, Permanent Mission of France to the United Nations Office and other international organizations in Geneva) said that it was a great honour for France, which had sponsored the first General Assembly resolution on the subject of enforced disappearance, to take part in the commemoration of the tenth anniversary of the Convention. Her country's commitment to the struggle against enforced disappearance was ongoing. In the context of the universal periodic review, for instance, France regularly called on the States that had not yet done so to ratify the Convention, and every three years it sponsored a resolution to renew the mandate of the Working Group on Enforced or Involuntary Disappearances. The Working Group and the Committee were two sides of the same coin, both pursuing the objective of justice for disappeared persons and the members of their families.

6. Considerable progress, measured by the number of ratifying States, had been made since the Convention's adoption in 2006. Regrettably, however, enforced disappearances appeared to be increasing again, not least because of the conflict in the Syrian Arab Republic, where, according to a recent report of the Independent International Commission of Inquiry on the Syrian Arab Republic, the government of Mr. Al-Assad resorted systematically to mass arrests and enforced disappearances. The situation in the Democratic People's Republic of Korea was also of grave concern.

7. The adoption of the Convention had filled a legal void by guaranteeing family members the right to know the truth regarding the circumstances of the enforced disappearance and the fate of a disappeared person. The work of the Committee had helped

to put an end to the impunity enjoyed for too long by the perpetrators of enforced disappearances, and the increasing number of requests for urgent action that the Committee was receiving attested to the success of its efforts to raise awareness of the Convention. In view of the specificities of enforced disappearance, a body devoted to monitoring the implementation of the Convention was more necessary than ever, and it was the responsibility of all — States, civil society and Committee members — to safeguard and build on the legacy of some 40 years of efforts to combat the crime of enforced disappearance. The commitment of France in that regard was unwavering.

8. **Mr. Auajjar** (Ambassador, Permanent Mission of Morocco to the United Nations Office and other international organizations in Geneva) said that the crime of enforced disappearance was an ongoing global scourge. Increasingly, non-State actors and terrorist groups were involved; the situation required all stakeholders to step up their efforts to combat that crime. In Geneva, for example, the Group of Friends of the Convention should be revived, and the issue of enforced disappearance should be brought up more frequently before the Human Rights Council. To make progress towards universal ratification of the Convention, inspiration could be drawn from the Convention against Torture Initiative, which had been launched by a group of States, including Morocco.

9. Morocco had ratified the Convention in 2013 at the recommendation of its Equity and Reconciliation Commission. His country's cooperation with United Nations mechanisms, including special procedures mechanisms, attested to its commitment to combating enforced disappearance.

10. **Mr. Joinet** (First Advocate General (Honorary) at the Court of Cassation of France) said that as the former Chair of the working group responsible for drafting the Declaration on the Protection of All Persons from Enforced Disappearance, he had witnessed the birth of the Convention; that had been, for him, one of the most exciting times in all the nearly 30 years he had served as an independent expert at the United Nations. The challenge had lain in finding a legal basis for combating a practice that a number of States, citing various pretexts, had refused to address. As early as 1977, the mothers and grandmothers of the Plaza de Mayo had been raising international awareness about enforced disappearance.

11. The adoption of the Convention by consensus had been the result of the leadership and determination of Bernard Kessedjian. As Ambassador Kessedjian brought down the gavel to seal the deal, the delegate of a country that had played an active role in the negotiations had been unable to hold back tears. That evening, still moved, he had written a poem that he had dedicated to a disappeared Uruguayan friend, Norma Scopise, and to all disappeared persons.

12. *Mr. Joinet recited his poem "¿Dónde están?".*

13. **The Chair** said that the yearly General Assembly resolution welcoming the efforts made by the Committee and calling for universal ratification of the Convention brought great encouragement. He welcomed the NGOs in attendance, noting that they made considerable contributions to the work of the Committee. In return, they were owed all due support, in particular with regard to protection from intimidation and reprisals.

14. The Committee worked in close cooperation with partners such as the Working Group on Enforced or Involuntary Disappearances and other treaty bodies, foremost among them the Human Rights Committee. The tenth anniversary of the adoption of the Convention was an opportunity to take stock of past efforts and to look towards the future. Committee members were grateful to all those who had taken part in the long struggle against enforced disappearance. It had been the suffering of the family members of disappeared persons, such as the grandmothers of the Plaza de Mayo, that had inspired the Convention.

15. Enforced disappearances continued to occur and continued to trigger the same feelings of perplexity and incredulity in the face of such inhumanity. Feelings should lead to action, however, and in that regard the Committee's mission was clear: namely, to transform the abstractions of the Convention into actual guarantees, so that it would become a fully effective tool for protection from and the prevention of enforced disappearance.

Panel I: The International Convention for the Protection of All Persons from Enforced Disappearance: an innovative and unique instrument

16. **Mr. Salvioli** (Chair, Human Rights Committee) said that enforced disappearance was especially tragic because it denied family members the right to mourn; it also invariably involved torture. Upon joining the Human Rights Committee in 2009, the first communication that he had considered involved an enforced disappearance (communication No. 1536/2006, *Cifuentes Elgueta v. Chile*) and he had been astonished to learn that the Committee had not taken a comprehensive approach to the issue. He had therefore submitted an individual opinion dissenting from the Committee's finding of inadmissibility. Upon the death of the disappeared person's mother shortly thereafter, her sister had sent a letter to the Committee saying that her last hope for justice had been lost.

17. He had just heard that a case decided on by the Committee on Enforced Disappearances some months earlier had provided vindication to the family of a disappeared person. The disappeared person's mother had burst into tears of joy on receiving the news that someone had finally ruled in her favour. It seemed to him as if, from his beginnings on the Human Rights Committee, he had come full circle.

18. For the Human Rights Committee and the Committee on Enforced Disappearances, the challenges involved in adopting a comprehensive approach to enforced disappearance included ensuring that the law was interpreted in the manner most favourable to the person, keeping in mind that enforced disappearance was a continuous crime, being flexible about accepting evidence, taking into account specific dimensions of the crime, such as gender considerations, being fully aware that enforced disappearance often went by other names, such as secret detention, making certain to treat cases in which a disappeared person's remains were located as enforced disappearances rather than extrajudicial executions, and resisting the temptation to require that a disappearance should last a given period of time before it could be labelled a disappearance. In considering communications, it was also important not to overlook possible violations of international human rights instruments simply because the complainants did not specifically allege them.

19. **Mr. Clapham** (Geneva Academy of International Humanitarian Law and Human Rights) said that the focus of his contribution would be the application of the Convention in times of armed conflict and, more specifically, the complex question as to whether the Convention covered enforced disappearances perpetrated by non-State armed groups. Thinking on that issue was obfuscated by two concerns: firstly, the fear of legitimacy, that is, the fear that, in referring to armed groups as having human rights obligations under an international treaty, observers and stakeholders might be according them some form of recognition as legitimate international actors; and, secondly, the fear of dilution, that is, the fear that the attention accorded to non-State armed groups might shift the focus away from the State party's obligations under the Convention. It could be argued that since, pursuant to article 43, the protection provided under the Convention in times of armed conflict was without prejudice to any parallel or complementary protection afforded under international humanitarian law, the question was not a pressing one. However, the question was important, in his view, as it had a bearing on the Convention's application in prosecution, extradition and complaints proceedings.

20. Although States parties to the Convention were under an obligation to prosecute or extradite persons accused of enforced disappearance, it was possible to argue that that obligation did not apply when the accused person was a non-State agent. Because the Convention covered acts committed by persons or groups of persons acting with the authorization, support or acquiescence of the State, as well as those committed by State agents, the obligation to prosecute or extradite would certainly apply to private individuals working for a security company and to vigilante groups that the State had failed to sanction. However, it was less clear whether the obligation would apply to acts committed by persons or groups of persons acting without the authorization, support or acquiescence of the State, for instance groups fighting against the State, such as Islamic State in Iraq and the Levant (ISIL). Article 3 of the Convention established an obligation to investigate such acts but made no mention of an obligation to prosecute or extradite. Since it was also unclear whether offences falling within that category would constitute extraditable war crimes under international humanitarian law, he suggested that States should consider clarifying the issue in their national legislation in order to prevent the emergence of a loophole that might allow individuals to escape justice for acts that were clearly prohibited under the Convention.

21. With regard to the right of petition, he noted that the different language used in article 30, which referred to disappeared persons as opposed to enforced disappearances, raised the possibility of the complaints procedure being used by the relatives of disappeared persons to petition States parties to take urgent action to investigate cases of enforced disappearance perpetrated by non-State armed groups. He suggested that the Committee might wish to consider that possibility more closely.

22. **Mr. Sacco** (Amnesty International) said that enforced disappearance was perhaps one of the most deliberately and chillingly cruel forms of intimidation and punishment in that it targeted not just political and social activists but also their families and communities, who had to live for years, and sometimes the rest of their lives, with the near but not quite total certainty that their relative or friend was dead. Enforced disappearance was a crime under international law that had occurred at various times in history and was continuing at the present time — in north-east Nigeria, for example, where disappearances were being perpetrated by both sides of the conflict with impunity; it must be punished irrespective of whether it occurred within a nexus of armed conflict or as part of a widespread or systematic attack against a civilian population.

23. Enforced disappearance was criminalized and punished within a complex framework of international human rights standards and international humanitarian and criminal law. Accordingly, non-ratification of the Convention did not mean that Governments and non-State actors had latitude to perpetrate or allow the perpetration of enforced disappearances. However, an important shortcoming in the Rome Statute, for example, meant that offences of enforced disappearance were prosecutable under international humanitarian law only when they constituted war crimes or crimes against humanity. Because that limitation was not present in the Convention, Amnesty International advocated strongly for broader ratification of the Convention and its transposition into domestic law in order to ensure that enforced disappearance was fully criminalized throughout the world.

24. To that end, Amnesty International called on States to make the declarations envisaged under articles 31 and 32 of the Convention and urged them to refrain from making or to withdraw any ratifications. In addition, to facilitate the Convention's incorporation into domestic law and its use as a prosecution tool, in 2011 Amnesty International had produced a checklist for effective implementation, modelled on the very successful checklists for implementation of the Rome Statute published in 2001 and 2008. Amnesty International also called on States parties to exclude offences of enforced disappearance from the application of statutes of limitation in both criminal and civil

proceedings and to prohibit the application of amnesties that denied victims their right to reparation.

General discussion

25. **Mr. Appreku** (Ghana) said that, as Ghana was preparing to ratify the Convention, he would be interested to know whether the Committee could provide a template to facilitate the preparation process. Addressing Mr. Clapham, he asked whether situations in which a State party denied being associated with a militia organization, claiming that the latter constituted a volunteer group, could nonetheless be interpreted as situations of acquiescence.

26. **Mr. Clapham** (Geneva Academy of International Humanitarian Law and Human Rights) said that a State's recognition or denial of association was largely irrelevant since the Convention covered the activities of militia groups whether or not they were supported by the Government and, if the Government could be shown to have supported a group, any offences of enforced disappearance committed by that group were extraditable and prosecutable under the Convention whether or not that support was acknowledged. To avoid any ambiguity, however, he suggested that Ghana should clearly indicate in its implementing legislation that offences of enforced disappearance were prosecutable under the Convention whether or not they were linked to the Government.

27. **Mr. Bouzeid** (Association of Families of Prisoners and Disappeared Saharans, Morocco) said that he would have liked the commemorative meeting to have served as an opportunity to hear the testimonials of friends and family members of victims. Referring to the situation in Western Sahara, where there had been over 400 cases of enforced disappearance, of which around 350 had been recognized by the Government of Morocco, he asked what role the Committee assumed in respect of territories that did not enjoy self-determination, and how a State party could be both a party to conflict and, at the same time, the arbiter of conflict-related violations.

28. **The Chair** said that the only course of action open to the Committee in cases that had occurred before the Convention's entry into force was to attempt to secure reparation for the victims. The Committee would, however, have the opportunity to examine the situation in Western Sahara as a whole when Morocco submitted its periodic report.

29. **Mr. Corcuera Cabezut** asked Mr. Clapham why he was of the view that article 3 did not render States parties subject to an obligation to prosecute non-State agents that committed acts of enforced disappearance without the acquiescence of the State, given that the text clearly established their obligation to bring those responsible to justice. Moreover, the rationale for article 3 of the Convention was precisely to distinguish between cases of enforced disappearance *strictu sensu* and cases of enforced disappearance committed by third parties. He questioned the advice given to the representative of Ghana. His advice to the State would be to copy the definition provided in article 2 of the Convention into its implementing legislation, establish a penalty in accordance with the gravity of the offence, and add a supporting provision to make it clear that the same conduct perpetrated by third parties without the acquiescence of the State would constitute the same offence and would carry a similar albeit slightly less severe penalty.

30. **Mr. Clapham** (Geneva Academy of International Humanitarian Law and Human Rights) said that the solution proposed was a good one in principle. The problem, in his experience, was that States parties tended to copy into their implementing legislation the text of article 6, which established the criminal offence, along with the definition provided in article 2, excluding article 3 and, by extension, the possibility of prosecuting a non-State actor. The Government of the United Kingdom of Great Britain and Northern Ireland had

recently encountered a problem of precisely that nature when attempting to prosecute an Afghan warlord.

31. **Mr. Huhle** asked whether Mr. Clapham's suggestion regarding the possible use of article 30 to take urgent action on behalf of any persons who had disappeared, irrespective of the circumstances, was underpinned by the assumption that different language had been used intentionally or was an attempt to use a simple drafting lapse to stakeholders' advantage.

32. **Mr. Clapham** (Geneva Academy of International Humanitarian Law and Human Rights), speaking as a professor of international law rather than a drafter of such law, said that the objective meaning of the text would be accepted in context irrespective of the intended meaning and that, on that basis, the Committee had scope under article 30 to consider complaints of disappearances that were not necessarily perpetrated by the State.

33. **The Chair** said that, in any case, when asked to take urgent action to establish the whereabouts of a missing person, the Committee did not necessarily know at that point whether the State was responsible. Establishing the perpetrator's identity and the State's complicity was one of the purposes of inquiries of that kind.

34. **Ms. Marouazi** (Le Médiateur pour la Démocratie et les Droits de l'Homme, Morocco), referring to the cases of enforced disappearance that had occurred in Western Sahara, said that, although the transitional justice process begun in the 1990s had shed light on the overall context of the violations and allowed for reparation to be provided to victims, in many cases it would never be possible to ascertain the full truth.

35. **Mr. Joinet** (First Advocate General (Honorary) at the Court of Cassation of France) said that the struggle against enforced disappearance was first of all a struggle against the passage of time. He had discovered that, for the children or grandchildren of disappeared persons, the need to find a trace of the disappeared loved one often became greater than the need to secure the conviction of the perpetrators of the crime. He therefore wondered whether there were any provisions in the Convention or in the Committee's jurisprudence that would allow the courts to continue investigating allegations of enforced disappearance, regardless of how old they were.

36. **The Chair** said that the drafters of the Convention had included a clause stating that the Committee would have competence solely in respect of enforced disappearances that had commenced after its entry into force. The Committee was therefore of the view that, in considering complaints, it could not go back in time. In its consideration of the reports of States parties, however, the Committee often sought a broad overview that, were it subjected to time limits, would be considerably less detailed.

37. **Mr. Shaibata** (Action internationale pour la paix et le développement dans la région des Grands Lacs) said that he wished to draw attention to the cases of enforced disappearance that had occurred in the refugee camps in Tindouf in southern Algeria. The sons and wife of the dissenter Khalil Ahmed, for example, had been without news of him ever since his disappearance into Algerian prisons nine years previously.

38. **Mr. Bouamri** (Lawyer) asked how enforced disappearances perpetrated by outlawed groups could be handled.

39. **Mr. Andreu** (International Commission of Jurists) said that States, pursuant to article 24 (6) of the Convention, had the obligation — regardless of the possible discontinuation of criminal prosecution — to take the appropriate steps with regard to the legal situation of disappeared persons whose fate had not been clarified and the legal situation of their relatives. In many countries, that obligation had led to the development of legal or administrative procedures, independent of the criminal justice system, for the clarification of the fate of disappeared persons.

Panel II: The International Convention for the Protection of All Persons from Enforced Disappearance and victims' rights

40. **Ms. Es-Slami** (Chair-Rapporteur, Working Group on Enforced or Involuntary Disappearances) said that she wished to add her voice to those calling for universal ratification of the Convention. She also encouraged States to recognize the competence of the Committee to receive and consider communications from or on behalf of individuals.

41. The Working Group had a database of more than 40,000 unresolved cases. The Committee, whose competence complemented that of the Working Group, could help the Working Group by considering complaints submitted by or on behalf of victims from States that had ratified the Convention. She called on Committee members to urge the States parties to the Convention to accede to the Working Group's requests for country visits.

42. The resurgence of enforced disappearance, in particular as perpetrated by non-State actors, was a concern, especially as the Working Group's methods of work did not allow it to consider such cases. The problem had been studied and ways of addressing it had been considered at a recent workshop held in Rabat.

43. Work was being done to address short-term enforced disappearances. An enforced disappearance of a month or two, which was a practice that appeared to be increasingly common, remained an enforced disappearance, regardless of its relative brevity. The Working Group was also working in consultation with the Committee on a study of enforced disappearance as it related to migration.

44. **Mr. Corcuera Cabezut** said that he wished to stress that the roles of the Working Group and the Committee were not overlapping. They were complementary. He called on the Working Group to continue its admirable efforts to encourage those States that the Committee was not in close contact with to ratify the Convention.

45. **Ms. Bacalso** (President, International Coalition against Enforced Disappearances) said that the Convention, which had first been a dream of the Latin American Federation of Associations of Relatives of Disappeared Detainees in 1981, was the bittersweet fruit of a long struggle. The relatives of disappeared persons had been affected by the adoption of the Convention in a number of ways. In Argentina, for instance, the Convention had been instrumental to the codification of the offence of enforced disappearance. In addition, Argentina had taken relevant legislative steps, including several related to reparation. Ensuring that enforced disappearance was not subject to a term of limitation and raising awareness of the Convention were ongoing challenges.

46. In Peru, the campaign for ratification of the Convention had led to greater cooperation among social sectors, public officials and organizations of families of disappeared persons. Although Peru had ratified the Convention, it had not recognized the competence of the Committee to receive and consider communications, and relatives of disappeared persons had been frustrated in their attempts to have the country's criminal courts apply the provisions of the Convention.

47. In countries that had not ratified the Convention, enforced disappearance remained widespread. India, for instance, had been accused of resorting to enforced disappearance in Jammu and Kashmir, although the number of disappeared persons had fallen since that State's decision to sign the Convention. Pakistan had legalized enforced disappearance outright and had adopted an act granting amnesty to perpetrators; the country's human rights activists tended to distance themselves from the issue. Nepal and Guatemala would do well to ratify the Convention, as would the Lao People's Democratic Republic, which — as the country currently chairing the Association of Southeast Asian Nations — would thereby expand its leadership role and gain respect from its development partners as a State that respected international human rights standards. Her country, the Philippines, prided

itself on having adopted the first and only law in Asia to criminalize enforced disappearance. The country's long-awaited signing and ratification of the Convention would encourage other Asian States to do the same.

48. **Mr. Corcuera Cabezut** said that, as Ms. Bacalso had suggested, the extent to which the Convention acted as a deterrent depended on the unscrupulousness of the Governments in power.

49. **Mr. Agostini** (International Federation for Human Rights) said that civil society organizations had a role to play in the implementation of the Convention. His organization had made the struggle against enforced disappearance one of its priorities, and it took various initiatives to help victims exercise their rights. It had supported the relatives of disappeared persons in legal proceedings relating to incidents in Guinea, Mali and the Republic of the Congo. In application of the principle of extraterritorial jurisdiction, it had provided support to persons who had been victims of torture or enforced disappearance in Relizane, Algeria, and were seeking justice in the French courts. In 2010, operating on the same principle, a French court had convicted several Pinochet-era officials.

50. Victims of human rights violations and the NGOs that supported them had sought means of countering the political pressure commonly exerted on the courts at the domestic level. On several occasions, for instance, the International Federation for Human Rights had appealed to the Office of the Prosecutor of the International Criminal Court.

51. The Federation and its member organizations supported the Committee and the Working Group on Enforced or Involuntary Disappearances by contributing to shadow reports and raising the issue of enforced disappearance on relevant occasions. They also urged States to ratify the Convention. His organization had called on French lawmakers to include in the act bringing French law into line with the Convention a provision giving the country's courts extraterritorial jurisdiction.

52. Local NGOs and their international partners were a cornerstone of the Committee's work as they were intimately aware of local laws and practices. Their efforts provided independent experts with an idea of the situation on the ground. The Committee should therefore continue consulting civil society. It was crucial for the work of the Committee to generate interest in the States parties whose reports it considered. NGOs could be of use in that regard by contributing to the dissemination of the Committee's concluding observations. Webcasts of the consideration of reports of States parties and other meetings of the Committee would help raise awareness of the Committee's work, in particular with regard to complaints procedures.

53. **Mr. Corcuera Cabezut** said that the Convention's transposition into domestic law was essential to its implementation, as was the promulgation of enabling legislation. Although he fully supported any initiatives that made the Committee's meetings, concluding observations and jurisprudence more widely accessible, United Nations funding was stretched. Any support that the NGO sector might provide to that end would therefore be very welcome.

54. **Mr. Andreu** (International Commission of Jurists) said that he would like to add his voice to the tributes paid earlier to the architects of the Convention, Bernard Kessedjian and Louis Joinet. He wished to honour as well the memories of Rodolfo Mattorollo and Patricio Rice, who had also had key roles in the Convention's development. The Convention was revolutionary in that it fused all the threads of international jurisprudence on enforced disappearance into a single instrument that provided the broadest possible protection for victims. The definition of victims established in its article 24 (1) was similarly broad, encompassing not only the disappeared persons themselves but all individuals who suffered harm as a result, in line with article 1 (2) of the Declaration on the Protection of All Persons

from Enforced Disappearance, which expressly recognized family members as victims of severe suffering.

55. The rights of victims were embodied in all articles of the Convention and were grouped broadly into six categories: the right to prevention; the right to an investigation; the right to reparation; the right to form organizations and associations to search for the disappeared persons and establish their fate; the right of family members who found themselves in vulnerable situations as a result of the disappearance to receive support and protection from the State; and the right to the truth. Each category in turn encompassed a range of rights. For example, the right to prevention included the right of detainees to inform family members and to receive visits, and the right of family members to access information, while the right to reparation encompassed a set of cumulative rights based on the Van Boven Principles for effective remedies and the principles against impunity developed by Louis Joinet. The sixth, and most important, right comprised three elements: the right to the truth as defined by the United Nations General Assembly in various resolutions; the right to know the humanitarian dimension of the events, including the fate of the disappeared person; and the right of children wrongfully removed from their families to know their true identity and origin and to re-establish links with their biological families.

56. The Committee had developed a number of standards and tools for upholding and protecting those rights, including guidelines for managing DNA banks and for addressing situations of unlawful adoption. Should the Convention's provisions be found to be insufficiently clear in any area, the Committee could refer to the jurisprudence of the Human Rights Committee and other treaty bodies, as it was empowered to do under articles 28, 37 and 38 of the Convention, which also made it clear that the Convention should not be interpreted in isolation from other human rights instruments. In addressing the challenges it faced, the Committee also had at its disposal the concluding observations addressed to States parties, the decisions issued in individual communications, and general recommendations and comments. Its guiding principle in all cases should be the need to afford enhanced protection for disappeared persons and their families.

General discussion

57. **Mr. Delmi** (Algeria), referring to the links between migration and enforced disappearance, said that the phenomenon was growing exponentially in scale and that at least 10,000 children were reported to have disappeared as a result of migration. He would like to know which State should accept responsibility for children who travelled through at least one country of transit between leaving their country of origin and reaching their country of destination, possibly working along the way; whether any research into the phenomenon had been or would be conducted; and what the international community might do to address that new challenge.

58. **Mr. Gain Brahim** (Observatory of Sahara for Peace, Democracy and Human Rights) asked what the various international mechanisms, including the Committee and the Working Group on Enforced or Involuntary Disappearances, were doing to resolve the more than 300 cases of enforced disappearance that were reported to have occurred in Western Sahara and at the refugee camps of Tindouf and to alleviate the suffering of relatives and friends who had been waiting for decades to learn the truth about their loved ones' fate.

59. **Mr. Dailal** (Démocratie Maroc), speaking as a person who had lived for 25 years in the Tindouf camps, asked how the Committee planned to address the violations that had occurred there. He called on Algeria to ratify the Convention, as Morocco had already done.

60. **Mr. Sallami** (Saharan militant, Morocco) asked to which State responsibility for the enforced disappearances that had occurred in the Tindouf camps should be attributed.

61. **Ms. Es-Slami** (Chair-Rapporteur, Working Group on Enforced or Involuntary Disappearances), responding to Mr. Delmi's question, said that the Working Group had drawn up a plan of action to conduct research into the phenomenon of disappearances of children in the context of migration. Given the complexity of the problem, which encompassed questions of territoriality, the responsibility of State and non-State actors and trafficking in human beings, among other issues, the programme of work might include regional consultations. Since United Nations funding for the research was limited, the Working Group would welcome any support that Algeria might provide.

62. She wished to clarify, with regard to the issue of responsibility for cases of enforced disappearance in Western Sahara and the Tindouf camps, that the Working Group's mandate was limited to determining the fate of the persons concerned. It did not extend to determining the responsibility of the State or any other parties involved.

63. **Mr. Corcuera Cabezut** said that the key consideration when attempting to attribute responsibility for persons who disappeared during migration would appear to be the territory or location in which the disappeared person had last been seen. If the person had been seen in the hands of State agents, responsibility lay with the State with jurisdiction in that territory or location. However, international cooperation was of course essential in all such cases.

64. **Mr. Al-Obaidi** said that the Committee was not permitted to express an opinion in public meetings about State responsibility for specific violations such as those that had occurred in Western Sahara. Other legal channels were available to address such issues.

Conclusion: Towards universal ratification

65. **Mr. D'Alotto** (Argentina) said that an Argentine newspaper had recently published an article detailing the confessions made by former dictator General Jorge Rafael Videla shortly before his death. Explaining the thinking behind the campaign of enforced disappearance, General Videla had indicated that the disappearances had been considered the price that must be paid in order to win the war and the best possible solution to the problem of how to deal with the thousands of people who could not be shot publicly and could not be convicted judicially, but also could not be released, because the authorities wished to conceal their fate from society. Thinking of that kind undoubtedly continued to exist. Fortunately, however, international organizations were better equipped to address such situations, public awareness was more developed, the threat and consequences of international opprobrium were far greater and a far more extensive arsenal of preventive, protective and investigative tools was available. The Government of Argentina, together with the Governments of France, Japan, Morocco and other States, was engaged on a daily basis in diplomatic efforts to promote a global campaign for universal ratification of the Convention. As new challenges emerged and enforced disappearance became increasingly associated not only with authoritarian regimes but with new phenomena such as international organized crime, trafficking in human beings, people smuggling and terrorism, action to end that particularly grave form of criminal activity was more vital than ever.

66. **Mr. Ihara** (Japan) said that, given the gravity of the phenomenon addressed by the Convention, 51 States parties was far too small a number. The Government of Japan urged all States to ratify the Convention as soon as possible and thanked Committee members and other States parties for their very active endeavours to that end. The Government of Japan also supported the work of the Working Group on Enforced or Involuntary Disappearances, whose efforts to resolve cases of enforced disappearance, unlike the Committee's, were not limited to cases occurring in States parties to the Convention. For that reason, closer cooperation between the Working Group and the Committee, as well as between all States parties, would help to spread awareness of the fact that enforced disappearance was an extremely grave violation of human rights that the Convention had a unique role in

addressing. He wished to highlight in that connection that the abductions of Japanese citizens perpetrated by agents of the Government of the Democratic People's Republic of Korea were a foremost example of enforced disappearance and therefore merited international attention. The Government of Japan sought the support and understanding of all States in putting an end to those continuing human rights violations.

67. **The Chair** said that he wished to close the meeting by calling on all States that were not yet parties to the Convention, particularly States in less well represented regions, to intensify their efforts to conclude the ratification process; he also called on all States that were already parties to submit their periodic reports on time in order to ensure the Committee's efficient operation. Summing up the afternoon's proceedings, he reminded the NGO sector that the protective and investigative mechanisms provided for under article 30 and article 31 were activated not through discussion but by the submission of relevant documentation to the secretariat. The Committee was required to have pertinent, credible information before it could initiate an inquiry, and it undertook to protect the anonymity and safety of all sources of such information. He also wished to remind participants that the Committee was part of a system of complementing mechanisms that included the Working Group on Enforced or Involuntary Disappearances and the special procedures envisaged under the mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and that all parts of the system should be used efficiently and effectively in order to ensure an appropriate response to the ongoing challenges.

The meeting rose at 6 p.m.